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RULES COMMITTEE PRINT 115–43
TEXT OF H.R. 477, SMALL BUSINESS MERGERS,
ACQUISITIONS, SALES, AND BROKERAGE SIM-
PLIFICATION ACT OF 2017

**[Showing the text of H.R. 477 as ordered reported by the
Committee on Financial Services.]**

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Merg-
3 ers, Acquisitions, Sales, and Brokerage Simplification Act
4 of 2017”.

5 **SEC. 2. REGISTRATION EXEMPTION FOR MERGER AND AC-**
6 **QUISITION BROKERS.**

7 Section 15(b) of the Securities Exchange Act of 1934
8 (15 U.S.C. 78o(b)) is amended by adding at the end the
9 following:

10 “(13) REGISTRATION EXEMPTION FOR MERGER
11 AND ACQUISITION BROKERS.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), an M&A broker shall be ex-
14 empt from registration under this section.

15 “(B) EXCLUDED ACTIVITIES.—An M&A
16 broker is not exempt from registration under

1 this paragraph if such broker does any of the
2 following:

3 “(i) Directly or indirectly, in connec-
4 tion with the transfer of ownership of an
5 eligible privately held company, receives,
6 holds, transmits, or has custody of the
7 funds or securities to be exchanged by the
8 parties to the transaction.

9 “(ii) Engages on behalf of an issuer in
10 a public offering of any class of securities
11 that is registered, or is required to be reg-
12 istered, with the Commission under section
13 12 or with respect to which the issuer files,
14 or is required to file, periodic information,
15 documents, and reports under subsection
16 (d).

17 “(iii) Engages on behalf of any party
18 in a transaction involving a public shell
19 company.

20 “(C) DISQUALIFICATIONS.—An M&A
21 broker is not exempt from registration under
22 this paragraph if such broker is subject to—

23 “(i) suspension or revocation of reg-
24 istration under paragraph (4);

1 “(ii) a statutory disqualification de-
2 scribed in section 3(a)(39);

3 “(iii) a disqualification under the
4 rules adopted by the Commission under
5 section 926 of the Investor Protection and
6 Securities Reform Act of 2010 (15 U.S.C.
7 77d note); or

8 “(iv) a final order described in para-
9 graph (4)(H).

10 “(D) RULE OF CONSTRUCTION.—Nothing
11 in this paragraph shall be construed to limit
12 any other authority of the Commission to ex-
13 empt any person, or any class of persons, from
14 any provision of this title, or from any provision
15 of any rule or regulation thereunder.

16 “(E) DEFINITIONS.—In this paragraph:

17 “(i) CONTROL.—The term ‘control’
18 means the power, directly or indirectly, to
19 direct the management or policies of a
20 company, whether through ownership of
21 securities, by contract, or otherwise. There
22 is a presumption of control for any person
23 who—

24 “(I) is a director, general part-
25 ner, member or manager of a limited

1 liability company, or officer exercising
2 executive responsibility (or has similar
3 status or functions);

4 “(II) has the right to vote 20
5 percent or more of a class of voting
6 securities or the power to sell or direct
7 the sale of 20 percent or more of a
8 class of voting securities; or

9 “(III) in the case of a partner-
10 ship or limited liability company, has
11 the right to receive upon dissolution,
12 or has contributed, 20 percent or
13 more of the capital.

14 “(ii) ELIGIBLE PRIVATELY HELD
15 COMPANY.—The term ‘eligible privately
16 held company’ means a privately held com-
17 pany that meets both of the following con-
18 ditions:

19 “(I) The company does not have
20 any class of securities registered, or
21 required to be registered, with the
22 Commission under section 12 or with
23 respect to which the company files, or
24 is required to file, periodic informa-

1 tion, documents, and reports under
2 subsection (d).

3 “(II) In the fiscal year ending
4 immediately before the fiscal year in
5 which the services of the M&A broker
6 are initially engaged with respect to
7 the securities transaction, the com-
8 pany meets either or both of the fol-
9 lowing conditions (determined in ac-
10 cordance with the historical financial
11 accounting records of the company):

12 “(aa) The earnings of the
13 company before interest, taxes,
14 depreciation, and amortization
15 are less than \$25,000,000.

16 “(bb) The gross revenues of
17 the company are less than
18 \$250,000,000.

19 “(iii) M&A BROKER.—The term ‘M&A
20 broker’ means a broker, and any person
21 associated with a broker, engaged in the
22 business of effecting securities transactions
23 solely in connection with the transfer of
24 ownership of an eligible privately held com-
25 pany, regardless of whether the broker acts

1 on behalf of a seller or buyer, through the
2 purchase, sale, exchange, issuance, repur-
3 chase, or redemption of, or a business com-
4 bination involving, securities or assets of
5 the eligible privately held company, if the
6 broker reasonably believes that—

7 “(I) upon consummation of the
8 transaction, any person acquiring se-
9 curities or assets of the eligible pri-
10 vately held company, acting alone or
11 in concert, will control and, directly or
12 indirectly, will be active in the man-
13 agement of the eligible privately held
14 company or the business conducted
15 with the assets of the eligible privately
16 held company; and

17 “(II) if any person is offered se-
18 curities in exchange for securities or
19 assets of the eligible privately held
20 company, such person will, prior to
21 becoming legally bound to consum-
22 mate the transaction, receive or have
23 reasonable access to the most recent
24 fiscal year-end financial statements of
25 the issuer of the securities as custom-

1 arily prepared by the management of
2 the issuer in the normal course of op-
3 erations and, if the financial state-
4 ments of the issuer are audited, re-
5 viewed, or compiled, any related state-
6 ment by the independent accountant,
7 a balance sheet dated not more than
8 120 days before the date of the offer,
9 and information pertaining to the
10 management, business, results of op-
11 erations for the period covered by the
12 foregoing financial statements, and
13 material loss contingencies of the
14 issuer.

15 “(iv) PUBLIC SHELL COMPANY.—The
16 term ‘public shell company’ is a company
17 that at the time of a transaction with an
18 eligible privately held company—

19 “(I) has any class of securities
20 registered, or required to be reg-
21 istered, with the Commission under
22 section 12 or that is required to file
23 reports pursuant to subsection (d);

24 “(II) has no or nominal oper-
25 ations; and

1 “(III) has—

2 “(aa) no or nominal assets;

3 “(bb) assets consisting solely
4 of cash and cash equivalents; or

5 “(cc) assets consisting of
6 any amount of cash and cash
7 equivalents and nominal other as-
8 sets.

9 “(F) INFLATION ADJUSTMENT.—

10 “(i) IN GENERAL.—On the date that
11 is 5 years after the date of the enactment
12 of the Small Business Mergers, Acquisi-
13 tions, Sales, and Brokerage Simplification
14 Act of 2017, and every 5 years thereafter,
15 each dollar amount in subparagraph
16 (E)(ii)(II) shall be adjusted by—

17 “(I) dividing the annual value of
18 the Employment Cost Index For
19 Wages and Salaries, Private Industry
20 Workers (or any successor index), as
21 published by the Bureau of Labor
22 Statistics, for the calendar year pre-
23 ceding the calendar year in which the
24 adjustment is being made by the an-
25 nual value of such index (or suc-

1 cessor) for the calendar year ending
2 December 31, 2012; and

3 “(II) multiplying such dollar
4 amount by the quotient obtained
5 under subclause (I).

6 “(ii) ROUNDING.—Each dollar
7 amount determined under clause (i) shall
8 be rounded to the nearest multiple of
9 \$100,000.”.

10 **SEC. 3. EFFECTIVE DATE.**

11 This Act and any amendment made by this Act shall
12 take effect on the date that is 90 days after the date of
13 the enactment of this Act.

